



Deval L. Patrick
Governor

Timothy P. Murray
Lieutenant Governor

Mary Elizabeth Heffernan
Secretary

The Commonwealth of Massachusetts
Department of Public Safety
Board of Building Regulations and Standards
One Ashburton Place, Room 1301
Boston, Massachusetts 02108-1618
Phone (617) 727-3200 Fax (617) 727-5732
TTY (617) 727-0019
www.mass.gov/dps

Thomas G. Gatzunis, P.E.
Commissioner

Alexander MacLeod, R.A.
Chairman

Gary Moccia, P.E.
Vice Chairman

Robert Anderson
Administrator

Date: February 18, 2010

Name of Appellant: Timothy Dwinal

Service Address: Richard J. Sullivan, Jr., Esq.
Sullivan Law PC
21 Muzzey Street
Lexington, MA. 02421

In reference to: 425 East Sixth Street Condo.
425 East Sixth Street
South Boston, MA. 02127

Docket Number: 09-828

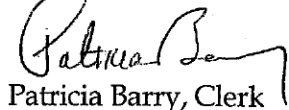
Property Address: 425 East Sixth Street Condo.
425 East Sixth Street
South Boston, MA. 02127

Date of Hearing: 12-22-09

Enclosed please find a copy of the decision on the matter aforementioned.

Sincerely:

BUILDING CODE APPEALS BOARD


Patricia Barry, Clerk

cc: Building Code Appeals Board

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 09-828

425 East Sixth Street)
Condominium Trust,)
Appellant;)
v.)
City of Boston,)
Inspectional Services Department)
Appellee.)

BOARD'S RULING ON APPEAL

Procedural History

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal filed on December 11, 2009 pursuant to 780 CMR §122.1. In accordance with 780 CMR §122.3, Appellant has requested that the Board review an order issued by Appellee relative to a drywell at the property located at 425 East Sixth Street, South Boston, MA 02127 ("Property").¹

By violation notice dated October 29, 2009, the City of Boston Inspectional Services Department ("Boston ISD"), required Appellant to submit plans and calculations relative to a drywell installed by the Appellant and this order is being appealed to the Board.

In accordance with M.G.L. c. 30A, §§10 and 11; M.G.L. c. 143, §100, and 801 CMR 1.02 *et. seq.*; and, the Board convened a public hearing on December 22, 2009 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present and testifying at the hearing was Timothy Dwinal, 245 East Sixth Street Condominium Trustee and Richard J. Sullivan, Jr., Esq. appeared on behalf of Appellant. No one appeared on behalf of the Appellee. Appellee was notified of the appeal by the Appellant on December 10, 2009 and a notice of hearing to the parties was properly sent on December 15, 2009. All witnesses were duly sworn.

¹ The Board recognizes that drywells are not expressly regulated by the State Building Code, 780 CMR; however, that issue was not appealed to the Board, and therefore was not addressed by the Board. The issue that was appealed to the Board was whether plans and calculations were required to be submitted pursuant to 780 CMR 110.8 under a permit issued by Boston ISD.

Exhibits in Evidence

The following Exhibits were entered into evidence without objection:

- Exhibit 1: State Building Code Appeals Board Appeal Application Form, dated December 10, 2009, including supporting materials and plans.
- Exhibit 2: Boston Water and Sewer Commission Map of East Sixth Street, printed November 17, 2009.

Findings of Fact

The following findings of fact are supported by substantial evidence based upon review of the exhibits marked and presented at the hearing as well as witness testimony. The Board finds the testimony of the Appellant to be credible and by and large uncontroverted. The relevant facts are as follows:

1. The Appellant is Timothy Dwinal ("Dwinal") on behalf of 425 East Sixth Street Condominium Trust ("Condo Trust"). (See Exhibit 1).
2. The Property at issue is located at 425 East Sixth Street in South Boston, MA and consists of a three unit condominium wood frame structure and a detached three car garage located in the rear of the property. (See Exhibit 1).
3. The three car garage is accessed by a shared driveway owned by the Condo Trust and by a second property located at 421 East Sixth Street. (See Exhibit 1).
4. For at least forty years, rain water has run from another property, 421 East Sixth Street, and collected onto 425 East Sixth Street's property by running down the Property's driveway and down a retaining wall onto a five foot piece of land owned by the Condo Trust. (See Exhibit 1, Appeal of Citation, page 3).
5. The property located at 427 East Sixth Street, a third property, consists of an abandoned three family wood frame structure and abuts the parcel of land owned by Condo Trust. (See Exhibit 1).
6. On March 20, 2008, Appellant was served with a complaint from Boston ISD stating the following, "CHAPTER 3308.0 PROTECTION OF ADJOINING PROPERTY WATER FROM DRIVEWAY DRAIN POURING INTO ADJOINING PROPERTY CAUSING DAMAGE TO BASEMENT." (See Exhibit 1-C, Appeal of Citation, page 3). Boston ISD claimed that water from property owned by the Appellant was pouring into the basement of the structure located at 427 East Sixth Street. (See Exhibit 1).
7. On or about August 19, 2009, Amanda B. Steinberg ("Steinberg"), a unit owner at 425 East Sixth Street, was served with a citation by Inspector Charles Colburn, Boston ISD, requiring her to apply "FOR A PERMIT TO RELOCATE THE DRIVEWAY DRAIN, AS PER A LANDSCAPE ARCHITECTURAL OR ENGINEERS INSPECTION OR INSTALL A SUITABLE [DRYWELL]." (See Exhibit 1-D).
8. A report dated September 8, 2008 and revised September 18, 2009 relative to the drainage issue was completed by VP Engineering, Inc. and was submitted to Dwinal. The report indicated that "it is unlikely that sufficient enough water is being drained into the rear yard

of No. 427 to cause flooding of the yard and leakage into the basement... A drywell... could be installed to address the runoff from No. 425/423 into the back yard of No. 427." (See Exhibit 1-E).

9. On or about September 23, 2008, on behalf of the Condo Trust, Walsh applied for a permit to construct a drywell at 425 East Sixth Street. (See Exhibit 1).
10. Boston ISD issued permit #2533 on October 10, 2008 for the installation of a drywell at the Property owned by the Condo Trust. (See Exhibit 1).
11. In or about January 2009, Boston ISD cited the Condo Trust and the unit owners for not building the drywell according to plan. (See Exhibit 1).
12. The Appellant applied for and received a new permit (#6491) on April 6, 2009 to reconstruct the drywell. In the presence of Boston ISD Inspector John Lyons, the drywell was dug up and a new pipe and fabric were installed. (See Exhibit 1-I, Appeal of Citation, page 5).
13. A Criminal Summons was issued to Steinberg on April 10, 2009 for violating "CHAPTER 3308 PROTECTION OF ADJOINING PROPERTY. STORM WATER FROM DRIVEWAY DRAIN IS POURING ONTO ADJOINING PROPERTY CAUSING DAMAGE AND EROSION." (See Exhibit 1-J).
14. Steinberg was issued a citation by Boston ISD on May 12, 2009 specifically stating "CHAPTER 110.8 ENGINEERING DETAILS, REPORTS, CALCULATIONS, PLANS AND SPECIFICATIONS. THE [BUILDING OFFICIAL] MAY REQUIRE SUCH CALCULATIONS, DESCRIPTIONS, NARRATIVES & REPORTS DEEMED NECESSARY TO FULLY DESCRIBE THE BASIS OF DESIGN FOR EACH SYSTEM REGULATED BY 780 CMR TO WIT PLANS FOR DRYWELL SUBMITTED NEED TO SHOW THE ENTIRE LOAD AND CALCULATIONS." (See Exhibit 1-L).
15. On October 29, 2009, Appellant was given a violation notice, No. V20/10, stating the following violation: "CHAPTER 110.8 ENGINEERING DETAILS, REPORTS, CALCULATIONS, PLANS & SPECIFICATIONS. THE BLDG OFFICIAL MAY REQUIRE SUCH CALCULATIONS, DESCRIPTIONS, NARRATIVES, & REPORTS DEEMED NECESSARY TO FULLY DESCRIBE THE BASIS OF DESIGN FOR EACH SYSTEM REGULATED BY 780 CMR. TO WIT; PLANS FOR DRYWELL SUBMITTED NEED TO KNOW ENTIRE LOAD ON DRYWELL AND CALCULATIONS." The remedy required the Appellant to "FURNISH [Boston ISD] WITH PLANS THAT SHOW THE ENTIRE LOAD AND THE CALCULATIONS FOR ALL RUNOFF GOING TO DRYWELL CONSTRUCTED UNDER PERMIT #6491 AND TAKE ALL APPROPRIATE STEPS TO STOP OVERFLOW ONTO ADJOINING PROPERTY AND OBTAIN BWSC APPROVAL FOR THE OVERFLOW TO BE CONNECTED TO BWSC DRAIN LINES." (See Exhibit 1-A).
16. In a letter dated November 25, 2009, Condo Trust provided Boston ISD a letter from Simon J. Hung, P.E. addressing the load and calculations for the drywell. (See Exhibit 1-P, Appeal of Citation, page 9).
17. The Property's driveway was repaved approximately four years ago and there were no alternations to the total impervious area. (Testimony).
18. The only alteration made to the Property was the installation of the drywell per Boston ISD's order. (Testimony).
19. As of December 22, 2009, Boston ISD has not issued a certificate of occupancy for permit #6491. (See Exhibit 1 and Testimony).

20. The Appellant seeks relief from the October 29, 2009 order from Boston ISD requiring plans and calculations for a drywell constructed under permit #6491.

Discussion

Pursuant to M.G.L. c. 143, § 100, the Board has the authority to decide appeals by those “aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code.” The Appellant is appealing an order by Boston ISD; therefore, the Board has jurisdiction over this matter.

The issue is whether the Appellant should be granted relief from the Appellee’s order on October 29, 2009 requiring plans and calculations of the drywell installed under permit #6491. Here, the Board must determine whether Boston ISD can request plans and calculations relative to the project under permit #6491, and if so, whether the plans and calculations submitted by the Appellant satisfy that requirement.

On October 29, 2009, the Appellant was ordered by the Appellee to provide plans and calculations for the drywell installed under permit #6491. Subsequently, in a letter dated November 25, 2009, Richard Sullivan, Esq., Counsel for the Appellant provided a letter containing the load and calculations for the drywell. No testimony or documentation was provided indicating that Boston ISD accepted the plans and calculations submitted by the Appellant.

The applicable section of the State Building Code (“Code”) provides:

110.8 Engineering Details, Reports, Calculations, Plans and Specifications. In the application for a permit for buildings and structures, the construction documents shall contain sufficient plans and details to fully describe the work intended, including, but not limited to all details sufficient to describe the structural, fire protection, fire alarm, mechanical, light and ventilation, energy conservation, architectural access and egress systems. The building official may require such calculations, descriptions narratives and reports deemed necessary to fully describe the basis of design for each system regulated by 780 CMR. In accordance with the provisions of M.G.L. c. 143, § 54A all plans and specifications shall bear the original seal and original signature of a Massachusetts registered professional engineer or registered architect responsible for the design, except as provided in M.G.L. c. 143, § 54A and any profession or trade as provided in M.G.L. c. 112, § 60L and M.G.L. c. 112, § 81R. 780 CMR 110.8.

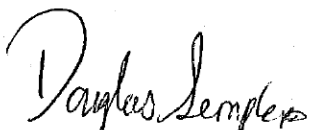
Therefore, “plans and details” may be requested at the discretion of the building official in connection with a permit for buildings and structures regulated by the Code. Furthermore, the Code does not prohibit a building official from requesting such information at any time and he or she has the latitude to ensure the safety of buildings and structures prior to issuing a certificate of occupancy. Drywells are not expressly regulated by the Code; however, a permit was issued in this instance and it is the Board’s position that when a permit is issued by a building official, the

building official may request plans and calculations prior to issuing a certificate of occupancy. Nevertheless, the Appellant complied with the October 29, 2009 order by submitting the requested information on November 25, 2009.

A motion was made by Board Member MacLeod to require Boston ISD to issue a certificate of occupancy because the drywell was inspected by Boston ISD and calculations were submitted. The motion was seconded by Board Member William Middlemiss.



Alexander MacLeod



Douglas Semple

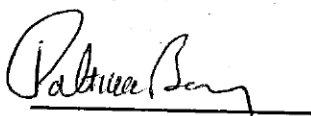


William Middlemiss

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to the Superior Court in accordance with M.G.L. c 30A, §14.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: February 18, 2010



Patricia Barry, Clerk

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$5.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

Patricia Barry, Coordinator
State Building Code Appeals Board
BBRS/Department of Public Safety
One Ashburton
Place – Room 1301
Boston, MA 02108